

***Banking & Payments Federation Ireland***

***Response to EBA's Consultation on revised Guidelines on  
internal governance under CRD***

***5 November 2025***

# BPFI Response to EBA Consultation on Internal Governance under CRD

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Section	Feedback
General Comment	BPFI members would welcome the simplification of the revised EBA and National Competent Authority Guidelines, in accordance with the EU Commission's simplification agenda.
2. Subject matter, scope and definitions Scope of application Section 6	<p>BPFI members would welcome clarification as to the rationale for the inclusion of the additional text (highlighted):</p> <p><i>6. These guidelines apply in relation to institutions' governance arrangements, including their organisational structure and the corresponding lines of responsibility, processes to identify, manage. Monitor and report all risks they are or might be exposed to, the <a href="#">network and information systems that are set up and managed in accordance with Regulation (EU) 2022/2554</a> and the internal control framework.</i></p> <p>Given that the consultation relates to guidelines on internal governance, it is not clear why this reference to DORA has been included in the "Scope of application" section.</p>
2. Subject matter, scope and definitions Scope of application Section 9 - "management body"	<p>The EBA guidelines refer to "the management body in its management function" –</p> <p><i>"In Member States where the management body appoints the person that effectively direct the business of the institutions, those persons belong in accordance with Article 3(1)(8a) of Directive 2013/36/EU to <a href="#">the management function of the management body</a> and are therefore to be assessed for their suitability in line with Article 9 of this Directive"</i></p> <p>Some of our members operate on the basis of an interpretation (supported by legal advice) that this term only applies to those European Significant Institutions that have a two-tier Board structure (e.g. some German banks) as opposed to the term applying to executive management committees. generally.</p> <p>The proposed, amended wording is open to interpretation e.g. some Boards delegate day-to-day running to executive</p>

	<p>management committees i.e. Boards do not delegate management of the firm to the executive management committee.</p> <p>Focus of the proposed amendment appears to be on <i>suitability assessment</i> for the executive, which provided for in the Individual Accountability Framework and the Fitness &amp; Probity Regime in Ireland.</p>
<p>4. Guidelines</p> <p>Title II – Roles and composition of the management body and committees</p> <p>1 Role and responsibilities of the management body</p> <p>Section 20 - "duties of management body"</p>	<p>Under Irish law institutions must comply with an Individual Accountability Framework which includes a Senior Executive Accountability Regime (SEAR). Part of the Framework requires institutions' senior executives to have statements of responsibility.</p> <p>BPFI members will seek clarity with National Competent Authority as this may impact on the Individual Accountability Framework and specifically on Statements of Responsibility. Institutions will need confirmation that this requirement is already met under the Individual Accountability Framework.</p>
<p>5. Committees of the management body in its supervisory function</p> <p>5.2 Composition of Committees</p> <p>Section 51 – risk and nomination and remuneration committees membership / ESG</p>	<p>Some BPFI members ask if it is realistic to expect INEDs who are members of the remuneration committee to have <i>"individually and collectively, appropriate knowledge, skills and experience to assess the impact of ESG factors on, and the consistency of the institution's risk appetite regarding ESG risks with, remuneration incentives....."</i></p> <p>What will be the level of experience that INEDs will require relative to ESG factors/risks? Clarification and detail in this regard would be welcome.</p>
<p>Title III – Governance framework</p> <p>6 Organisational framework and structure</p> <p>6.1 Organisational framework</p> <p>Section 68(a) - Mapping of Duties</p>	<p>68a(a) – We have referred to Ireland's Individual Accountability Framework which is of relevance here and we will contact our NCA in this regard to seek confirmation that the requirements regarding Management Responsibility Maps and Statements of Responsibility will address this requirement in the guidelines.</p> <p>68b(a). Key Function Holder is not defined – it is crossed out in the definitions section. Clarification is required, should the definition of KFH be reinstated in the definitions section.</p> <p>68b(a). A point arises here under Irish law. Under the Individual Accountability Framework, there are four pillars one of which is the Senior Executive Accountability Regime (SEAR). 68b(a) seems to impose additional requirements to SEAR with regards to Statements of Responsibilities (the template also differs). Are</p>

	<p>organisations expected to maintain two different statements now- a Statement of Responsibilities &amp; a Statement of Role and Duties?</p> <p><i>....The description may include an indication of the time commitment expected to fulfil the duties. Institutions may use the template provided in Annex II.</i></p> <p>In addition to including this feedback here, we will raise this point with our NCA.</p>
<p>7 Organisational framework</p> <p>7.1 Application in a group context</p> <p>Section 89 - "Empty Shell" considerations</p>	<p>Some BPFI members have asked for clarification that these EBA requirements are not incremental to current Board considerations, given Ireland's NCA's focus on the role of the Board relative to the viability of a business plan.</p> <p>In addition to raising this point here, we will raise it with our NCA.</p>
<p>10 Corporate values and code of conduct</p> <p>Section 101a - Indicators of Gender Equality</p>	<p>The additional text set out in Section 101a of the guidelines highlight that our NCA and EBA expectations are not aligned (regarding diversity and inclusion),</p> <p>We will also raise this point with our NCA.</p>
<p>19 Internal control functions</p> <p>19.1 Heads of the internal control functions</p> <p>Section 172 – heads of the internal control functions</p>	<p>Please see our point above in relation to "management body in its management function" – regarding Section 9.</p>
<p>Section 21 – Compliance Function</p>	<p>BPFI members have pointed out the ongoing references throughout but specifically within paragraph 209 –</p> <p><i>"In accordance with Article 76(5) of Directive 2013/36 the compliance function assesses and mitigates legal risk stemming from non-compliance events and ensures that the institution's risk strategy and all material management decisions take into account legal risk stemming from non-compliance events. In particular, the compliance function should advise the management body on measures to be taken to ensure compliance with applicable laws, rules, regulations and standards, and should assess the possible</i></p>

*impact of any changes in the legal or regulatory environment on the institution's activities and compliance framework".*

The addition of "legal risk stemming from non-compliance events" within this section risks an interpretation that the Compliance function should have ownership for legal matters including litigation risk. Practice varies within financial institutions; legal and compliance functions are not always combined. It is frequently the case that Compliance functions advise on risks associated with non-compliance with applicable laws, rules, regulations and standards but do not provide legal advice.

BPFI members suggest that the reference to "legal risk" be removed to provide clarity.

*209: "In accordance with Article 76(5) of Directive 2013/36, the compliance function assesses and mitigates legal risk stemming from non-compliance events and ensures that the institution's risk strategy and all material management decisions take into account legal risk stemming from non-compliance events. In particular, the compliance function should advise the management body on measures to be taken to ensure compliance with applicable laws, rules, regulations and standards, and should assess the possible impact of any changes in the legal or regulatory environment on the institution's activities and compliance framework"*

With reference to the highlighted text, we note that in a number of financial institutions, second line responsibility for advising management on certain prudential regulatory requirements sits with the Risk Management function given their subject matter expertise. Can the EBA clarify the expectation of the Compliance function, as duplication of activity is not ideal nor effective given the subject matter expertise lies outside the Compliance function.

<p>Section 21 Compliance function</p> <p>Section 218</p>	<p><i>"218 The IAF should perform an independent review of the effective implementation of the institution's risk strategy and assess whether....."</i></p> <p>This appears to be a significant new expectation for Internal Audit departments in institutions.</p> <p>What does "effective implementation mean" (could be open to various interpretations – e.g. box ticking exercise as opposed to a subjective assessment of how effective a risk strategy is proving to be.</p>